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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,940	09/27/2001	Paul Portmann	33966	2200

116 7590 10/08/2003
PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND, OH 44114-3108

EXAMINER

LUEBKE, RENEE S

ART UNIT PAPER NUMBER

2833

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/964,940

Applicant(s)

PORTMANN

Examiner

Renee S. Luebke

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-6 and 9 is/are allowed.
- 6) ☒ Claim(s) 1,2,7,8 and 10-13 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 4, 2003 has been entered.

2. Contrary to applicant's statements on pages 1 and 8 of the paper filed September 4, 2003, no attached drawing sheets were found with that paper. However, the substitute drawing sheets filed July 31, 2003 are acceptable.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 7, 12, 13 and 11 (as dependent upon the rejected claims) are rejected under 35 U.S.C. 102(b) as being anticipated by Gandelot. This switch comprises a metal switching element 34, contact surfaces 28 and a diaphragm 40 that butts against a housing 20, 27. The diaphragm is prestressed (at and adjacent 41) to secure the switching elements against the contact surfaces.

In regard to claim 11, the intended use of the switch "in miniaturized devices" does not result in a structural difference and is therefore not given patentable weight. It is further noted that a modern car is seen to be a "miniaturized" device in comparison to the cars in which Gandelot intended the switch be used.

5. Claims 2, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gandelot. In regard to claim 8, the number of contact surfaces is seen to have been an obvious matter of design choice; applicant does not indicate a particular reason for using three or four, or any other

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number. In regard to claims 2 and 10, it is noted that Gandelot does not indicate the specific plastic material for the housing 27 or the specific elastic material for the diaphragm. However, it is common to form such members from a 2-part injection molded plastic and a thermoplastic, respectively, as a matter of convenience. Therefore, it would have been obvious to form the housing and diaphragm of Robinson in this manner.

6. Claims 4-6 and 9 (and claims 11 and 14 as dependent thereon) are allowed.

Claims 14/1, 14/2, 14/7, 14/8 and 14/10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The boot of Lovasco is similar to the diaphragm of the present invention.

8. Applicant's arguments with respect to Robinson have been favorably considered but are moot in view of the new grounds of rejection.

9. Any response to this action **may be mailed to:**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

For additional information regarding this new address, which was effective May 1, 2003, see *Correspondence with the United States Patent and Trademark Office*, 68 Fed. Reg. 14332 (March 25, 2003).

or faxed to:

(703) 872-9306

Hand-d liv red responses should be brought to:

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Crystal Plaza 4, Fourth Floor (Receptionist)
2201 South Clark Place, Arlington, Virginia.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mrs. Renee Luebke at (703) 308-1511. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mrs. Paula Bradley, can be reached at (703) 308-2319.



Renee S. Luebke
Primary Patent Examiner
September 30, 2003